

FCC MAIL SECTION

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 93M-14  
30631

Re Applications of

MM DOCKET NO. 92-116 ✓

WSKG PUBLIC

TELECOMMUNICATIONS COUNCIL

File No. BPED-910501MB

For a Construction Permit  
for a New FM Station  
Binghamton, New York

ARROWHEAD CHRISTIAN CENTER

File No. BPED-910501MC

For a Construction Permit  
for a New FM Station  
Binghamton, New York

MEMORANDUM OPINION AND ORDER

Issued: January 11, 1993 ; Released: January 13, 1993

1. Under consideration are: (a) a Joint Motion for Approval of Settlement Agreement, filed on October 20, 1992, by WSKG Public Telecommunications Council ("WSKG") and Arrowhead Christian Center ("Arrowhead"); (b) a Petition for Leave to Amend and Amendment, filed on December 11, 1992, by Arrowhead;<sup>1</sup> (c) a letter to the Presiding Judge, dated December 21, 1992, from W. Jan Gay, Assistant Chief, Audio Services Division, Mass Media Bureau ("Bureau"); (d) a supplement to (b), filed on December 23, 1992, by Arrowhead; and (e) consolidated comments in support of (a), (b), and (d) filed on January 6, 1993, by the Bureau.

Petition for Leave to Amend

2. Arrowhead seeks leave to amend its application to change its proposed technical facilities by specifying operation on Channel 211 in lieu of Channel 218. In addition, Arrowhead proposes to change its transmitter site, antenna height, and effective radiated power. Arrowhead contends that acceptance of its amendment would eliminate the mutual exclusivity with WSKG and allow a grant of both the amended Arrowhead application and the application of WSKG. The Bureau's engineering staff has reviewed Arrowhead's amendment and has determined that it is in compliance with the Commission's technical rules. Moreover, the Bureau's review corroborates Arrowhead's assertion that acceptance of the amendment will eliminate the mutual exclusivity that exists between the applicants.

3. Arrowhead's petition will be granted and its amendment accepted. Suffice it to say, Arrowhead has shown good cause for the relief requested.

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<sup>1</sup> Arrowhead's petition and amendment were late filed. However, Arrowhead has shown good cause for such filing, and its submission will be accepted.

Contingent Environmental Issue

4. WSKG. The Hearing Designation Order in this proceeding, 7 FCC Rcd 3507 (1992) ("HDO"), specified a contingent environmental issue against WSKG (Issue 3). WSKG addressed this matter in an amendment filed on July 7, 1992. The amendment was accepted by Order, FCC 92M-808, released July 22, 1992. In his letter, the Assistant Chief, Audio Services Division, reports that based upon an examination the amendment, the Bureau has found that the information supplied by WSKG satisfies the requirements of Section 1.1311 of the Commission's Rules. Consequently, the Bureau requests the elimination of Issue 3 with respect to WSKG.

5. Arrowhead. The HDO also specified a contingent environmental issue against Arrowhead (Issue 3). However, Arrowhead's December 11, 1992, site change amendment, as supplemented, moots this issue.

6. In view of the foregoing, Issue 3 as it relates to both WSKG and Arrowhead will be deleted.

Joint Motion for Approval of Settlement Agreement

7. Petitioners have entered into a Settlement Agreement which has been submitted for approval. Pursuant to the agreement Arrowhead amended its application to eliminate the existing mutual exclusivity with WSKG. In consideration, WSKG has agreed to reimburse Arrowhead for its legitimate and prudent expenses in this proceeding, up to a total of \$18,000. The Bureau supports approval of the agreement.

8. The Joint Motion will be granted and the Settlement Agreement approved. WSKG and Arrowhead have demonstrated compliance with Section 73.3525(a) of the Commission's Rules. Specifically, the applicants have shown that their respective applications were not filed for the purpose of reaching or carrying out a settlement agreement, that the amount promised is all that will be paid, that such amount is not in excess of the legitimate and prudent expenses of Arrowhead, that there are no ancillary agreements, and that approval of the agreement will serve the public interest. In addition, Arrowhead has provided an itemized accounting of its reimbursable expenses, and has established that such expenses exceed the amount of consideration to be paid by WSKG.

9. Given the acceptance of Arrowhead's amendment eliminating the mutual exclusivity with WSKG, the deletion of Issue 3, and the approval of the Settlement Agreement, no impediment exists to the grant of both applications, and they will be granted.

Ordering Clauses

Accordingly, IT IS ORDERED that the late filed Petition for Leave to Amend and Amendment filed by Arrowhead on December 11, 1992, IS ACCEPTED.

IT IS FURTHER ORDERED that the Petition for Leave to Amend and Amendment filed by Arrowhead on December 11, 1992, IS GRANTED, and the accompanying amendment IS ACCEPTED.

IT IS FURTHER ORDERED that the Supplement to Amendment filed by Arrowhead on December 23, 1992, IS ACCEPTED.

IT IS FURTHER ORDERED that Issue 3, as it pertains to WSKG and Arrowhead, IS DELETED.

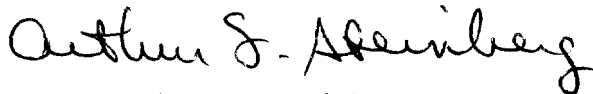
IT IS FURTHER ORDERED that the Joint Motion for Approval of Settlement Agreement filed by WSKG and Arrowhead on October 20, 1992, IS GRANTED; that the Settlement Agreement IS APPROVED; and that reimbursement to Arrowhead in the amount of \$18,000 IS AUTHORIZED.

IT IS FURTHER ORDERED that the above-captioned application of WSKG Public Telecommunications Council for a construction permit for a new FM station at Binghamton, New York, IS GRANTED.

IT IS FURTHER ORDERED that the above-captioned application of Arrowhead Christian Center for a construction permit for a new FM station at Binghamton, New York, as amended, IS GRANTED.

IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Arthur I. Steinberg". The signature is written in a cursive, flowing style.

Arthur I. Steinberg  
Administrative Law Judge